

Effective Date: May 15, 1985

DEPARTMENT OF COMMERCE GRANTS ADMINISTRATION

SECTION 1. PURPOSE.

.01 This Order prescribes policies for the award and general administration of Department of Commerce (DoC) grants and cooperative agreements.

.02 This revision is a general update of the Order and includes policies developed by the Financial Assistance Review Board (FARB); revisions necessary to conform to Department Administrative Order (DAO) 213-5, "Audit Follow-up and Resolution," and the Department's Debt Management Operating Standards and Procedures issued January 12, 1983; and provides for a Department grants management procedures manual.

SECTION 2. AUTHORITY AND SCOPE.

.01 This Order is issued under the authority of 5 U.S.C. § 301; Department Organization Order 10-5, "Assistant Secretary for Administration."

.02 This Order is applicable to all DoC organization units in their award and administration of financial assistance as defined in Section 3. of this Order. This Order does not apply to any types of financial assistance not included in the Section 3. definitions unless specifically indicated otherwise.

SECTION 3. DEFINITIONS.

.01 Amendment. An amendment reflects any change made to a grant. Examples of amendments include, but are not limited to, the following: continuations, renewals, supplementals, no cost extensions, budget revisions, or any combination of the aforementioned.

.02 Award Date. The date that the Grants Officer signs the grant award document.

.03 Budget Data Analysis. The review and evaluation of the applicant's proposed budget data submitted with the grant proposal and of the judgmental factors applied in projecting the estimated costs, to form an opinion on the degree to which the proposed costs in the budget represent what performance of the grant project should cost.

.04 Budget Period. The interval of time into which the project period is divided for budgetary and funding purposes. A budget period is usually 12 months.

.05 Close-out. The process by which an organization unit determines that all financial assistance award requirements and applicable administrative actions, including audit resolution, have been completed by the recipient and the DoC.

.06 Continuation. A continuation is an amendment that provides continued funding for each budget year of the project period.

.07. Contract. The legal instrument reflecting a relationship between the DoC and a business, organization or individual whenever: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. A contract may also refer to the legal instrument reflecting a relationship between a recipient and contractor or between such contractor and subcontractor.

.08 Cooperative Agreement. The legal instrument reflecting a relationship between the DoC and a recipient whenever: (a) the principal purpose of the relationship is to provide financial assistance as defined in paragraph .11 of this Section to the recipient and (b) substantial involvement is anticipated between DoC and the recipient during performance of the contemplated activity. Cooperative Agreements are subject to the same Office of Management and Budget (OMB), Treasury, and other Federal directives as grants.

.09 Discretionary Grant Program. A financial assistance program under which funds are awarded on the basis of merit or program need and to which an applicant is not entitled as a matter of law.

.10 Finance Officer. A Finance Officer is an employee charged with the organization units's financial management responsibilities.

.11 Financial Assistance. A transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation which is authorized by Federal statute. As used in this Order, it includes only grants and cooperative agreements and does not include any agreement under which only direct Federal cash assistance to individuals, a subsidy, loan, loan guarantee, or insurance is provided.

.12 Grant. The legal instrument reflecting a relationship between the DoC and a recipient whenever: (a) the principal purpose of the relationship is to provide financial assistance as defined in paragraph .11 of this Section to the recipient and (b) no substantial involvement is anticipated between DoC and the recipient during performance of the contemplated activity. The term "grant", as used in this Order, refers to both a grant(s) and cooperative agreement(s), unless specifically stated otherwise.

.13 Grants Officer(s). A Grants Officer is an employee who is responsible for all administrative aspects of a grant including having the authority to take final action on

grants by signing grant awards, amendments thereto, and suspension and termination notices.

.14 Head of Organization Unit . The head of and organization unit is the head of a primary operating unit, as defined in Department Organization Order (DOO) 1-1, and the Secretarial Officers. (Also see paragraph .21 of this Section.)

.15 Insular Area. As defined by Pub. L. No. 95-134, Title V, S 501 (1977), as amended (48 U.S.C. 1469a), the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands.

.16 Name Check. A name check is an inquiry as to the criminal record of financial status of an individual or organization which is made to Federal, State or local law enforcement or investigative bodies, or to other Federal Agencies.

.17 New Grant/New Award. A new grant or new award is the initial funding for a project not previously funded by the organization unit.

.18 No Cost Extension. A no cost extension is an amendment that extends the project period with no additional funding.

.19 Nondiscretionary Grant Program. A financial assistance program under which specific recipients are named by statute.

.20 Nonexpendable Personal Property. Tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.

.21 Organization Unit. Primary operating units and other units authorized by a Secretarial Officer to award or administer financial assistance. See Appendix B for complete listing.

.22 Program Officer. A Program Officer is an employee responsible for the technical, scientific, or other programmatic aspects of a grant(s).

.23 Project Period. The total time for which support of a project has been approved. A project period may consist of one or more budget periods.

.24 Property Management Officer. A Property Management Officer is an employee who is responsible for uniform administration of property in the possession of recipients which was purchased by the recipient or furnished by the Federal Government under a grant.

.25 Real Property. Real Property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

.26 Recipient. Any individual or entity which receives DoC financial assistance as defined in paragraph .11 of this Section.

.27 Renewal. A renewal is an amendment that extends the project period and adds additional funds.

.28 Solicited Proposals. Applications submitted by prospective recipients for financial assistance received as a result of published notice or direct solicitation.

.29 Supplemental. A supplemental is an amendment that provides funding over and above the approved budget during the current budget period with no change to the project period.

.30 Suspension. An action which temporarily suspends Federal sponsorship under the grant pending corrective action by the recipient or a decision to terminate the grant.

.31 Termination. Cancellation of Federal sponsorship, in whole or in part, under a grant at any time prior to the date of completion.

.32 Unsolicited Proposals. Applications for financial assistance which are not received as a result of a direct solicitation in the Federal Register, Commerce Business Daily, or other publication.

.33 Write-off. Termination of collection activity under the Federal Claims Collection Standards. It does not include termination of a collection when it is determined that a debt is legally without merit.

SECTION 4. GENERAL REQUIREMENTS.

.01 Establishment of Liaison. The head of each organization unit shall establish a central liaison for their organization unit. The liaison shall interact with the Federal Assistance Division (FAD) located under the Assistant Secretary for Administration. Each liaison shall perform the following primary duties, as well as other functions assigned to it:

a. Policy Implementation.

1. Review relevant draft regulations;
2. Ensure each program's compliance with Federal, Departmental, and organization unit's grant administration requirements;
3. Provide guidance to organization unit program officers regarding applicable grants administration related statutes; circulars and regulations;
4. Implement the policy requirements set forth in this Order.

b. Monitoring.

1. Review the organization unit's grant administration system for compliance with this Order; and
2. Review grant forms and other grant documents for compliance with applicable requirements.

c. Liaison and Coordination.

1. Answer outside and intra-departmental questions and inquiries on grant-related matters;
2. Coordinate, where appropriate, the organization unit's consolidated funding, single letters of credit, and other types of grants activities; and
3. Coordinate clearance of proposed publications for the Federal Register through FAD.

d. Information Collection, Analysis, and Dissemination.

1. Collect organization unit material for the Catalog of Federal Domestic Assistance (CFDA) and the Budget Information System (BIS);
2. Coordinate preparation and submission of reports on grant related matters for DoC and;
3. Disseminate information from FAD to appropriate organization unit personnel and officers.

e. Audits. Serve as working level contact for audit matters.

.02 Grant Review Process.

a. Award Selection Criteria. For each of its discretionary grant programs, each organization unit shall establish selection criteria for use in the evaluation of applications submitted for new awards. The selection criteria should be stated as specifically as practicable. If differing weights or degrees of importance in evaluation are assigned to particular selection criteria, that must be indicated. If selection criteria for a program are not weighted, the organization unit evaluates each criterion equally. When an organization unit initially formulates or intends to make a significant change in its selection criteria, it is encouraged to use public participation.

b. Annual Public Notice. To inform the interested public, each organization unit shall publish at least annually a notice in the Federal Register which includes basic information for each discretionary grant program. Each organization unit shall include the following items:

1. Statutory authority, the amount and availability of funds, and the purposes for which the funds may be spent;
2. The type of funding instrument planned to be used;
3. Applicant eligibility criteria;
4. The application and/or preapplication due/closing dates, if any;
5. The contact person/address/phone number;
6. The selection process/procedure;
7. The selection criteria and the weight, if applicable, assigned to each criterion. If weights are not assigned, organization units shall indicate that all weights are equal;
8. Funding priorities, if any;
9. Recipient matching requirements, if any;
10. Anticipated processing time;
11. Maximum project period for which assistance is available;
12. The notification that recipients/applicants who have an outstanding accounts receivable with DoC will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt;
13. The CFDA number(s) and title(s);
14. The applicability of Executive Order 12372 "Intergovernmental Review of Federal Programs."

c. Other Solicitations of Applications. Notice(s) in the Federal Register or other publications soliciting applications or preapplications must also include the items listed in Section 4.02b. above.

d. Minimum Notice. In order to provide the public reasonable notice, there must be a minimum of 30 days between the date of publication and the closing date for receipt of applications (e.g., November 1 publication date December 1 closing date).

e. Material Changes. If material changes are made with respect to the information listed in paragraph .02b. of this Section, or if circumstances arise after annual publication which would have a major effect on the applicants proposals for funding, the new information or changed circumstances must be published in the Federal Register.

f. Other Publications. To ensure widespread notification to the public, program officials are strongly encouraged to use publications in addition to the Federal Register which, in their opinion, have a wide distribution among interested persons.

g. Clearance of Publications. All proposed submissions for publication in the Federal Register related to DoC grant programs or individual actions must be cleared by the FAD prior to publication. Affected submissions are proposed rules, interim rules, final rules, notices of availability of funds, requests for proposals, or any item to be published in the Federal Register which substantially relates to financial assistance.

h. Competitive Review. DoC discretionary grant program awards shall be made on the basis of competitive review.

1. The minimum requirements for the competitive review process include:

(a) An application is reviewed only when it has been submitted in response to an application notice published in the Federal Register or any additional publication used by the organization unit;

(b) Applications are treated fairly under the review process;

© Each application receives an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program;

(d) There are at least three persons in each review panel which may include one or more persons who are not employees of the Federal Government;

(e) Each review panel uses the selection criteria that apply to the program covered by the application notice;

(f) After the review panel has evaluated the applications, the organization unit prepares a rank ordering of the applications based solely on the evaluations by the review panel;

(g) The organization unit determines the order in which applications will be selected for funding based on the following factors:

(1) Any priorities or other program requirements that have been published in the Federal Register and apply to the selection of applicants for new awards;

(2) The rank order of the applications established by the review panel on the basis of the selection criteria.

(h) The Grants Officer may choose not to fund a highly ranked application based on the high risk factors set forth in Section 6.05.

2. Requests for waivers to these minimum competitive review requirements must be made in writing by the Head of the organization unit and submitted to the Chief, FAD for approval. The request should include the name and CFDA number of the program(s); requirement(s) requested to be waived; and the reason for the request. Appeals of FAD's decision may be made by the Head of the organization unit in writing to the Financial Assistant Review Board (FARB). The FARB decision may be appealed by the organization unit in writing to the Deputy Secretary.

i. Unsolicited Proposals. No unsolicited proposal may be funded outside the competitive process if that proposal is one which falls within the program goals of a competitive program. If outside the parameters of a competitive program, an unsolicited proposal must enhance the financial assistance objectives of the sponsoring organization unit. The decision to fund an unsolicited proposal must be fully justified and included in the official grant file.

j. For-Profit/Commercial Organizations.

1. The Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224, requires that the legal instrument be selected on the basis of the character of the transaction (e.g., procurement or assistance) rather than on functional activity or class of recipient. Organization units may not restrict for-profit organizations from applying for financial assistance when they are not ineligible under the authorizing statute to receive financial assistance awards, except when authorized by Paragraph 2. below.

2. Organization units which determine that for-profits should not be eligible for financial assistance under a particular program other than programs which specifically prohibit for-profit participation by authorizing statute must receive approval from the Chief, FAD. Requests for approval must be submitted in writing by the Head of the organization unit and must include the name and CFDA number of the affected program(s). In addition, the request must include the basis for determining that for-profit organizations are to be ineligible to apply when not ineligible under the authorizing statute. Appeals of FAD's decisions may be made by the Head of the organization unit in writing to FARB. The FARB decision may be appealed by the Head of the organization unit to the Deputy Secretary.

.03 Grants Management Procedures Manuals.

a. Department Manual. The Chief, FAD is authorized to develop and issue a manual, and amendments thereto, covering grants management procedures. The manual shall be developed consistent with this Order and shall be issued in accordance with DAO 200-3, and subject to review and comment by the Office of Inspector General (OIG) prior to final approval by the Assistant Secretary for Administration. The manual shall have the same force and effect as this Department Administrative Order in accord with Section 7 of DAO 200-3.

b. Organization Unit Supplements. If an organization unit has specific statutory or regulatory requirements which result in policies, procedures, or restrictions which are not included in the Department manual (see a. above), a document addressing these specific areas should be developed by the organization unit. The document should take the form of a supplement to the Department manual, and be in full compliance with it and this Order. Organization units are required to submit their supplements to FAD for review and clearance prior to internal issuance and use.

.04 Responsibilities and Duties of Key Officials. To ensure sound management in the administration of grants, the specific roles and responsibilities of personnel involved in the grants process should be clearly defined in job descriptions and performance plans. This subsection prescribes the minimum roles and responsibilities to be performed by these officials.

a. Grants Officer. A Grants Officer is responsible for:

1. Signing grant awards and amendments;
2. Suspending or terminating awards;
3. Ensuring that the grant is prepared and administered in accordance with applicable regulations, and policies;
4. Ensuring that grant pre-award administrative procedures such as the competitive review process are carried out;
5. Selecting the appropriate funding instrument to be used in the particular transaction;
6. Approving sole-source awards of over \$10,000 for contracts under grants;
7. Ensuring proper monitoring of recipient's compliance with all terms and conditions of the grant and taking appropriate action where there is non-compliance;
8. Coordinating with the OIG to ensure that questions raised by audit reports are resolved within the time frames and procedures set by DAO 213-5, "Audit Follow-Up and Resolution;"
9. Ensuring that the grant is properly closed-out;
10. Approving the recipient's purchase of non-expendable personal property and real property, and the recipient's request for Federally owned property, and the recipient's request for Federally owned property furnished for use in performance of the grant; monitoring disposition of property in accordance with the grant award provisions;
11. Reviewing for appropriate action all reports submitted by the recipient;

12. Providing grants administration guidance where appropriate, to recipients;
13. Approving requests for advance or reimbursement; and
14. Maintaining official grant files.

A Grants Officer shall perform subparagraphs 1. And 2. above. Subparagraphs 3. through 14. above may be redelegated.

b. Legal Counsel. Grants are legally binding documents. The procedures established for grants administration are agency rules which have legal consequences. The preparation and interpretation of these documents and rules, any disputes which arise with respect to them, and agency actions taken (or failed to be taken) at any stage of grants administration, all have legal effects of concern to the agency and its grants programs, as well as to grant applicants, recipients, and beneficiaries. Accordingly, Grants Officers and other organization unit personnel participating in grants administration shall request their legal counsel to review the following:

1. Grant related documents prior to publication in the Federal Register;
2. The provisions of a proposed grant or class of grants for clarity, legal sufficiency, and avoidance of potential legal problems, and whether the award is otherwise in compliance with applicable laws and regulations;
3. The proposal identifying the specific statutory authority for that particular proposal, and providing documentation for the official grant file;
4. Proposed suspension and/or termination actions;
5. And shall request legal counsel advice on occasions when the other parties under the grant are represented by their own attorneys in discussions or written communications on aspects of the grant and in other circumstances when there is a need for legal interpretation or other legal advice.

c. Office of Inspector General (OIG). As appropriate, the OIG may:

1. Conduct, supervise or coordinate audits, inspections and/or investigations relating to DOC financial assistance programs and operations;
2. Review, and advise on the adequacy of the applicant/recipient financial management systems, the projected and/or claimed costs, and the projected and/or reported performance;
3. Recommend policies, and procedures, to promote economy and efficiency and to prevent and detect fraud, waste and abuse in DOC financial assistance programs and operations;

4. Review the backgrounds of applicants (organizations, business firms, and individuals) for DOC financial assistance to identify those with a criminal record and/or poor credit history; and

5. Identify to FAD those applicants for DOC financial assistance which have outstanding audits and/or debts with the Department.

d. Finance Officer. A Finance Officer has the following responsibilities:

1. Provide full accounting support for and financial advice on grants to an organization unit or program;

2. Provide financial data and reports on grants as requested by other Federal agencies, the organization unit, or the Grants Officers;

3. Record the financial transactions associated with each grant from inception to grant close-out and debt collection;

4. Per recommendation of appropriate grants/program officials, process the documentation for disbursement of funds to be issued in the form of checks, establish letters of credit on behalf of recipients, and monitor financial aspects of letters of credit;

5. Act as certifying officer as designated;

6. Record the appropriate financial information in the organization unit accounting system upon receipt of the closeout memorandum from the Office of Inspector General; and

7. Perform the functions designated to the finance officer in the Department's Debt Management procedures.

8. Monitor project activities to ensure that project is being properly carried out;

9. Provide programmatic guidance and technical assistance to recipients;

10. Provide background and recommendations on programmatic issues such as amendments to scope of work or budget;

11. Review and write evaluations of quarterly and final performance, property, and patent reports submitted by recipient;

12. Provide to Grants Officer for official grant file copies of all correspondence with recipient, internal memoranda regarding specific grant files, and copies of progress reports and evaluations;

13. Monitor recipient purchase and use of property purchased or furnished by the government under the grant;
14. Review financial and expenditure reports for consistency with project;
15. Review, analyze, and comment on audit reports;
16. Report to Grants Officer in a timely manner on potential and existing problems and/or non compliance; and
17. Recommend suspension and/or termination where appropriate.

f. Property Management Officer. A property management officer has the following responsibilities:

1. Ensure uniform implementation of organization unit policies and procedures pertaining to the administration of property purchased by the recipient or furnished by the government under a grant;
2. Provide guidance to recipients in establishing and maintaining property accountability systems and in the use and control of property acquired under the provisions of grants;
3. Review the adequacy of the recipient's property control record system;
4. Establish and maintain property accountability records and provide a property completion report to the Grants Officer upon disposal of property.

Subparagraphs 2. through 4. above may be reassigned to property officials.

.05 Composition of Official Grant File. Each organization unit shall maintain a single official grant file for each grant. The official grant file shall contain, at a minimum:

- a. The original proposal, budget, and application form;
- b. Documentation of the evaluation upon which award selection was based including evaluations, scores, justifications, etc.;
- c. Internal review document, such as the clearance sheet, bearing signatures or initials of grants personnel, legal counsel, and budget officer clearance;
- d. Name check documents;
- e. FARB documents; and
- f. Original award document and any amendments with all attachments (except OMB Circulars);

- g. Any memoranda of negotiations with the recipient, and correspondence between the recipient and organization unit in the pre-award and post-award phases;
- h. If applied for, organization unit request for waiver(s) and response(s);
- i. Performance/program, financial, patent, and property reports submitted by the recipient with the written evaluation/clearance by the program officer;
- j. Property records;
- k. Recipient requests for amendment and all correspondence and evaluations of the proposed amendment;
- l. Audit reports including documentation of actions taken and the resolution of audit findings;
- m. Close-out documents;
- n. Other correspondence regarding the project, including interagency and Congressional correspondence.

.06 Forms.

- a. Unless non-standard forms have been approved by OMB, each organization unit shall use the standard forms prescribed by OMB Circular A-102 for awards to state and local governments and Indian tribes and A-110 for awards to nonprofit and for-profit organizations. Standard Form 424 shall be used as the application form for all applicants.
- b. An organization unit shall not require more than one original and two copies of any form or reports.
- c. Organization units shall not distribute to applicants or recipients any request for information including application kits or forms which does not have current OMB Paperwork Reduction Act approval. The Departmental office of Information Resources Management, Information Management Division, should be contacted regarding OMB requirements.

.07 Federal Assistance Award Date System (FAADS). Each organization unit shall provide to the FAD on a quarterly basis reports on all transactions involving the obligation and deobligation of Federal funds concerning Federal financial assistance (grants, cooperative agreements, loans, loan guarantees, insurance, direct payments for specified use, etc.) and related information. The information shall be transmitted in a format approved by the FAD. Collection and dissemination of this information to Congress, the States and the public are mandated under the Consolidated Federal Funds Report Act of 1982 (Pub. L. No. 97-326). FAADS replaces Treasury Circular 1082 as the tool by which States shall be notified of financial assistance information.

.08 Financial Assistance Awards Planning System (FAAPS). FAAPS requires each organization unit to submit to FAD an annual plan of financial assistance awards, broken down on a quarterly basis. The plan will include at least the following:

- a. Amount of money available by program (consistent with latest budget estimate);
- b. Projected number of awards (include continuation and renewal funding in count);
- c. Relationship of each program to Department goals and Management by Objectives (MBOs);
- d. The purpose of the system is to accomplish the following objectives;
 1. Establish a planning mechanism to ensure that available resources are directed so as to achieve broad, cross-cutting Secretarial goals and to ensure that individual financial assistance awards support Secretarial and Departmental MBOs.
 2. Permit the financial assistance award process to flow smoothly. Special attention should be directed toward reducing fourth quarter spending. If individual program expenditures for the fourth quarter exceed 30 percent of the total budget authority available for that specific program, documentation justifying the excessive fourth quarter spending must be submitted to FAD.
 3. Eliminate the potential for duplication of effort by identifying, in advance, how financial assistance awards will be targeted, to the extent possible.

.09 Grants to Insular Areas.

a. Grants Consolidation. Organization units are encouraged to consolidate grants to Insular areas with similar grant project activities. If consolidated the organization unit shall --

1. Arrange for establishment of consolidated letters of credit whenever possible;
2. Provide for a single set of written program and financial reports for each consolidated grant, instead of individual reports for each grant which has been consolidated;
3. Receive centrally and distribute all requested reports to programs;
4. Designate a primary contact with the recipient on all administrative matters related to the consolidated grant; and
5. Maintain one official grant file on the consolidated grant.

b. Waiver of Cost Sharing Requirements. Any requirement for local matching funds under \$200,000 (including in-kind contributions) to be provided by American Samoa or

the Northern Mariana Islands must be waived, notwithstanding any other provision of law. Any matching funds otherwise required by law to be provided by government entities of an Insular Area may be waived at the agency's discretion. (Section 501 (d) under Title V of Pub. L. No. 95-134, as amended by Section 601 under Title VI of Pub. L. No. 96-205 and by Section 6 of Pub. L. No. 98-213; 48 U.S.C. 1469 a (d).)

.10 Organization Unit Grant System Review.

a. A review team composed of Office of the Secretary personnel shall evaluate the internal grants administration policies and procedures of the organization unit, including the Regional Administrative Support Centers and other field locations. The scope of review will include but not be limited to compliance with this Order, the grants management procedures manual, Department-wide grant policy, and the internal grants administration policies of the organization unit. The review team's draft report will be sent to the organization unit for comment.

b. Revisions - Each organization unit shall revise its grants administration system to ensure conformance with the recommendations of the review team's final report within a time period agreed to by the head of the organization unit and the Assistant Secretary for Administration. The Assistant Secretary for Administration may waive or modify the review team's recommendations.

SECTION 5. SELECTION OF THE FUNDING INSTRUMENT.

.01 General. A major objective of the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224, codified and restated in 31 U.S.C. 6301 et seq. without intended substantive change in accord with Pub. L. No. 97-258, (the Act) is to distinguish Federal grant and cooperative agreement relationships from Federal procurement contract relationships and to authorize their different usages. The Act in part provides that if a Federal agency is authorized by law to use one or more of the three instruments, it now is able to enter into any of the three types of arrangements (unless specifically prohibited by other law from using any of them); but, shall use the applicable type delineated in the Act.

a. For example, if a program's statute authorizes the agency to enter into "contracts" for expressed purposes, and the principal intent of a legal instrument would be to accomplish a public purpose of support or stimulation rather than to acquire property or services for direct agency use of benefit, then the agency not only is authorized to issue a grant (or cooperative agreement) but is required to do so, unless a specific exception is made under the authority of the Act.

b. The Act authorized the OMB to issue supplementary interpretive guidelines. They are contained in 43 Federal Register 36860 (August 18, 1978), Implementation of Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. No. 95-224).

.02 Distinguishing Contracts from Assistance Instruments.

a. Contracts. The Act states that the relationship between the agency and recipient is one of procurement whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, the property or services for the direct benefit or use of the Federal Government. Also, a type of procurement contract may be used in a specific instance when the organization unit decides that it is appropriate, e.g., whether public needs can be best satisfied by using the procurement process in a specific instance, instead of a grant or cooperative agreement. (See OMB Guidelines of August 18, 1978.)

b. Grants and Cooperative Agreements. The Act states that the relationship between the agency and recipient is one of assistance whenever the principal purpose of the instrument is the transfer of anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. A grant or cooperative agreement is generally used to provide this assistance. (See OMB Guidelines of August 18, 1978.)

c. Consulting Services. Grants and cooperative agreements are not to be used as legal instruments for consultant services as defined in OMB Circular A-120, Guidelines for Use of Consulting Services, dated April 14, 1980. (That is, grants and cooperative agreement shall not be used for the hiring of consultant services for the purpose of performing in-house organizational studies or other studies solely for internal government use.)

d. Funding Instrument Determination. The Grants Officer may coordinate determining the proper instrument with the appropriate procurement official and/or legal counsel. If a determination is made that the relationship is or should be one of procurement (see subparagraph a. above), the Grants Officer shall return the application or proposal to the program office.

e. Change of Funding Instrument. Where a program has been conducted in whole or in substantial part through the use of contracts but a determination is made to change to the use of grants, the basis for this determination shall be documented by the Grant officer in the official grant file.

.03 Using Substantial Involvement to Distinguish Grants and Cooperative Agreements.

a. Anticipated Level of Federal Involvement. The basic statutory criterion for distinguishing between grants and cooperative agreements is whether substantial involvement is anticipated between the organization unit and the recipient during performance of the contemplated activity, as described in the proposed scope of work.

1. A grant is appropriate when substantial involvement is not anticipated. This means that the recipient can expect to perform the project without substantial organization unit collaboration, or intervention.

2. A cooperative agreement is appropriate when substantial involvement is anticipated, i.e., the recipient can expect substantial organization unit collaboration, participation, or intervention in the management of the project.

b. Increasing or Decreasing Involvement.

1. To bring the project into conformance, an organization unit may find it necessary to become substantially involved during the period of the grant. If substantial involvement is expected to continue after the period of the original grant, the renewal instrument shall be converted into a cooperative agreement. If an organization unit finds itself becoming substantially involved in a long-term grant activity, then the Grants Officer should convert the grant into a cooperative agreement after negotiation with the recipient.

2. Where an organization unit does not remain substantially involved in a project funded by a cooperative agreement, the cooperative agreement shall be converted into a grant, if and when the assistance instrument is to be renewed. If substantial involvement decreases in a long-term project, the cooperative agreement shall be converted into a grant after negotiation with the recipient.

c. Deciding Whether There is Substantial Involvement.

1. Sections C. and G. of the OMB Guidelines of August 18, 1978, describe the characteristics of the factors which each Grants Officer should consider in deciding whether there will be substantial involvement of the organization unit in the performance of activities under the assistance instrument.

2. This section sets forth examples both of involvement which may be substantial depending upon the circumstances and of situations which would not be considered substantial. The examples are not meant to be a checklist nor does the presence of a single factor necessarily constitute substantial involvement. Rather, they illustrate concepts that, in varying degrees or combinations, could suggest the use of either a grant or a cooperative agreement. For more detailed examples, see the OMB guidelines, implementation of Federal Grant and Cooperative Agreement Act of 1977. (43 Federal Register 36860 August 18, 1978.)

d. Examples of Substantial Involvement.

1. Organization unit has power to halt immediately an activity if detailed performance specifications (e.g., construction specifications) are not met.

2. Organization unit requires that the recipient meet or adhere to specific procedural requirements before subsequent stages of a grant project may continue.

3. Organization unit approves substantive provisions of proposed subawards under grants; participates in the selection of subawards, and approves "Requests for Proposals"

or "Invitations for Bids" to be issued by recipients, or subrecipients; approves the subrecipient before the subaward may be awarded.

4. Organization unit selects, participates in the hiring, or approves selection of key recipient personnel.
5. Organization unit collaborates with the recipient by working jointly with a recipient scientist or technician, in carrying out the scope of work, trains recipient personnel, or details Federal personnel to work on the project effort.
6. Organization unit specifies direction or redirection of the scope of work due to inter-relationships with other projects such as requiring recipients to achieve a specific level of cooperation with other projects that may or may not be funded by the organization unit.
7. Substantial, direct organization unit operational involvement during the project to ensure compliance with such statutory requirements as civil rights and environmental protection.
8. Organization unit limits recipient discretion with respect to scope of work, organizational structure, staffing, mode of operations and other management processes, coupled with close monitoring or operational involvement during performance.

e. Examples of Non-Substantial Involvement.

1. Organization unit follows normal procedures as set forth in Attachment O of OMB Circular A-102 and A-110 concerning federal review of grantee procurement standards and sole source procurement.
2. Organization unit becomes involved in a project solely to correct deficiencies in project or financial performance.
3. Organization unit merely exercises normal stewardship responsibilities during the project to ensure compliance with statutory requirements, OMB circulars or this Order.
4. Organization unit performs a pre-award survey and requires corrective action to enable the recipient to account for Federal funds.

SECTION 6. PRE-AWARD ADMINISTRATIVE REQUIREMENTS AND POLICIES.

.01 Financial Assistance Review Board (FARB). The purpose of the FARB is to review all proposed grant, cooperative agreement, loans and loan guarantee actions before their award by the organization unit. Membership of the Board consists of the Assistant Secretary for Administration (Chairperson); the Deputy Secretary, or Designee; General

Counsel, or Designee; and is staffed by the FAD. FAD is the coordinating unit and focal point for the FARB. Each organization unit must establish a single internal focal point for interaction with FAD concerning FARB matters.

a. Other Departmental offices participating in the financial assistance review process and their roles are described below:

1. The Office of Congressional and Intergovernmental Affairs receives a copy of the submitted materials to alert staff that a proposed action is pending.
2. The organization unit's legal counsel must indicate clearance on each proposed action forwarded to FAD including clearance on legislative authority.
3. The Office of General Counsel reviews each proposed action and provides legal consultation to FARB.
4. The OIG checks each proposed applicant organization to determine status of outstanding audits and status of name checks, debts owed to the Department and other information which may be of negative consequence. Findings are reported to FAD for FARB consideration prior to clearing awards.
5. The organization unit Budget Officer or Finance Officer clearance indicates availability of funds for each action submitted to FARB.

b. At no time, prior to FARB clearance, shall a DoC employee notify a proposed applicant either verbally or in writing, i.e., letter of intent, that the applicant will be receiving and award.

c. A request for reconsideration of FARB decisions may be made by the Head of the organization unit in writing to the FARB. The final FARB decision may be appealed by the Head of the organization unit in writing to the Deputy Secretary.

.02 Application Package or Kit. Each organization unit should, to the extent feasible, develop an application kit to aid applicants in the development and submission of application materials. To this end, each organization unit should include, at a minimum, the following information in the kits:

- a. Application forms;
- b. Information setting forth statutory, regulatory, and other requirements applicable to the program including , but not limited to, applicable OMB and other circulars (and indicating that free copies are available upon request);
- c. Criteria for the selection of recipients and, when applicable, the weights assigned to each criterion;

d. A statement of submission date deadlines, if any, and an estimate of the time needed to review (including Executive Order 12372 review where applicable) and process applications; and

e. A reminder that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment.

.03 Statutory Authority. Each financial assistance proposal must be awarded under the proper authorizing statute.

.04 Name Checks.

a. Organization units shall require name checks to key personnel of nonprofit and for-profit organizations that are potential recipients of DoC grants.

b. A name check is used to ascertain background information on key individuals associated with potential recipients which should be considered in award decisions and/or the structuring of awards. Specifically, the name check investigation is designed to reveal if any key individuals associated with an applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which are significant to management honesty or financial integrity. In cases where the applicant is a business enterprise, the OIG name check includes a review of Dun and Bradstreet data.

c. Subject to subparagraph e. below, officials of State and local governments and officials of accredited colleges and universities acting on behalf of their respective entities in applying for assistance shall be exempt from the name check requirements.

d. A name check form will be completed by each of the following persons associated with an applicant.

1. For-Profit Organizations:

(a) A sole proprietorship, the proprietor;

(b) A partnership, each partner; and

(c) A corporation, each officer and each individual owning or controlling at least twenty percent (20%) of the enterprise, the chief financial manager, the project manager, and any other person who has authority to speak for and commit the recipient in the management of the project.

(d) A joint venture, each officer and each individual owning or controlling at least twenty percent (20%) and the chief financial officer of each company in the joint venture, the project manager, and any other person who has authority to speak for and commit the recipient in the management of the project.

2. For a nonprofit organization, each officer, the executive director, the project manager, and the chief financial manager.

e. A completed name check form may also be required of others associated with the applicant if deemed appropriate by the DOC or organization unit reviewing an application for assistance or by the appropriate Grants Officer.

f. The name check requirement, except as provided for in subparagraph c. above or in subparagraph 8.03(a) of DAO 207-10, "Inspector General Investigations," is mandatory.

g. An award may be made prior to receiving the results of the name check if special conditions are added to the award document to provide for suspension or termination of the award should the name check reveal adverse information.

.05 High Risk Organizations.

a. DoC policy is to make awards to applicants and/or recipients who are competently managed, responsible, and committed to achieving the objectives of the awards they receive.

b. The following factors should be used as indicators whether an applicant and/or recipient is competent:

1. Financial stability - Examples of financial instability are insolvency, threat of insolvency, or substantial financial dependency on Federal support.

2. Prior experience with Federal grants.

3. Adequate internal controls - An example of inadequate internal financial or administrative controls is the inability to comply with the financial management standards or procurement standards in OMB and Treasury Circulars which is grave enough to raise serious doubts whether the entity can properly account for Federal funds or use them for their intended purpose. Other examples are: an entity is delinquent in payments to the Internal Revenue Service for Federal income and Federal Insurance Contributions Act taxes withheld from employees or an entity has an accounts receivable with the Government for which no repayment plan has been established or payment is delinquent.

4. Satisfactory performance under other Federal awards - Examples of unsatisfactory performance are materials violations of terms and conditions or present debarment or previous termination for cause under other awards or contracts.

5. Responsible officials or key employees - Examples of possible lack of responsibility are when officials or key employees of an entity responsible for administering a Federal grant have been convicted of:

(a) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(b) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affect the question of responsibility as a Government recipient; or

(c) Name checks on officials or key employees of an entity produce adverse information of a serious nature, to the extent that there is serious doubt about the entity's ability to perform satisfactorily.

6. Satisfactory final audits - An issue of the applicant's responsibility may arise when prior audits have indicated a lack of adherence to administrative and cost accounting guidelines, or a failure to achieve programmatic objectives resulting in disproportionately high disallowances.

7. Other information about the responsibility of the entity as a grant recipient.

c. Depending on the nature and severity of the evidence, the Grants Officer may:

1. For applicants:

(a) Delay the award until conditions are corrected;

(b) Designate the applicant as high risk and make the award with special conditions;

(c) Not make the award.

2. For recipients:

(a) Require recipient to correct the conditions;

(b) Designate as high risk and assign special conditions;

(c) Suspend and/or terminate the award;

d. If any of the factors set forth above are present, the Grants Officer shall document in the official grants file the nature of action taken and reason.

e. If special conditions which deviate from OMB Circular A-102 and A-110 are imposed, the recipient shall be notified in writing as to why the conditions are being imposed and what corrective action is needed. Copies of such notification shall be sent to OMB through the FAD.

.06 Budget Date Analysis. Prior to the award of each grant a thorough review and evaluation of the applicant's proposed budget data shall be performed by the program official and grants officer and documented in the official grant file. This review shall

include the evaluation of cost data, including a determination that the costs proposed are in accordance with applicable cost principles; the evaluation of specific elements of costs; and projection of these data to determine the effect on such factors as:

- a. the necessity for certain costs;
- b. the reasonableness of amounts estimated for the necessary costs;
- c. the basis used for allocation of overhead costs; and
- d. the appropriateness of allocation of particular overhead costs to the proposed project.

.07 Pre-Award Accounting System Surveys. Organization units, in cooperation with the Assistant Inspector General/Auditing, shall arrange for a pre-award survey of financial management systems when the organization unit has reason to doubt the adequacy of the financial management system to meet the standards prescribed in the applicable OMB Circular A-102 or A-110.

.08 Intergovernmental Review of Federal Programs. In accordance with Executive Order 12372, each organization unit shall provide the States the opportunity for consultation on proposed Federal financial assistance and direct Federal development programs. The Executive Order will cover programs previously covered by OMB Circular A-95 to the extent a program provides assistance to an applicant which is a state or local government or an agency thereof, and directly affects a State or local government. Under the Order, State and local officials, not the Federal Government, will determine what Federal programs and activities to review and the procedures for the review.

.09 Notifications to Applicants.

- a. Each organization unit shall acknowledge the receipt of all financial assistance proposals (solicited and unsolicited) within ten working days of the initial receipt of the proposal. This acknowledgment shall indicate the time-frame within which a decision is expected to be made.
- b. Each organization unit shall notify the applicant of the decision regarding funding of the proposal within ten working days of issuance of award for solicited applications and within ten (10) working days of decision not to fund for unsolicited applications.
- c. If an organization unit decides not to fund a proposal which has programmatic merit but wishes to retain the proposal on file for future funding consideration, the organization unit shall notify the applicant of the proposal's status. Proposals retained for more than six months shall be presumed lapsed unless the organization unit acquires current endorsement from the applicant.

d. If a decision has been made not to fund a proposal containing information marked "confidential," "proprietary," "trade secret," or the like, the proposal containing such information shall be returned promptly to the sender.

.10 Financial Assistance Award Package.

a. Starting Date. All awards shall have starting dates which either coincide with the award dates or are after the award dates.

b. Project Period. New awards are generally one year in length with the project to be completed within that time. New awards may also have a project period which is multiyear in length. If so, the new award would provide funds for the first of several budget periods (usually 12 months). On multiyear project awards, the award document will reflect both the project period and the budget period. For example, on the award document the project period may be October 1, 1984 through September 30, 1987 (3 year project period) and the budget period as October 1, 1984 through September 30, 1985 (one year). Funding for succeeding budget periods (continuations) may be approved "in principle" only depending on the availability of funds and satisfactory progress towards project objectives and may not be "guaranteed."

c. Executive Order 12432, Minority Business Enterprise.

1. On July 14, 1983, Executive Order 12432, Minority Business Enterprise, was signed by the President. The order directs Departments and Agencies to encourage recipients of Federal financial assistance to use minority businesses in contracts under grants and cooperative agreements. The order requires each Federal agency having substantial grant making authority to develop and implement a plan which will achieve the goals of the order.

2. To this end, the DoC has developed a plan which has been approved by the Deputy Secretary which requires the following steps to be taken by each organization unit within the Department:

(a) All financial assistance awards shall contain a one-page flyer briefly explaining to recipients the nature of the Department's efforts to implement Executive Order 12432 and encouraging them to use minority businesses in subcontracts.

(b) Each award package shall contain information on the Minority Business Development Center network provided by the Minority Business Development Agency. This network can be used by recipients to assist in matching qualified minority enterprises with contract opportunities.

(c) During on-site visits to recipients, project monitors shall explain the nature of the Executive Order to them and assess their efforts in subcontracting with minority businesses.

d. Terms and Conditions.

1. Cooperative Agreement. When a cooperative agreement is selected as the funding instrument, the contents of the cooperative agreement will include as a minimum the following:

- (a) A project management plan identifying the respective role, responsibility, obligation, and accountability which each participant to the agreement will assume; and
- (b) A statement of how project performance will be measured.

2. Program Income. Recipients are required to account for program income related to projects financed in whole or in part with federal funds. Program income represents gross income earned by the recipient from Federally supported activities. Program income may include, but not be limited to, income from service fees, sale, of commodities, usage or rental fees, and royalties on patents and copyrights.

(a) Proceeds from the sale of real and personal property purchased in whole or in part with federal funds shall be handled in accordance with the property management provisions set forth in the grant document, the Department grants management manual and this Order.

(b) Unless the financial assistance award provides otherwise, recipients shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents produced under the award.

(c) Every award under which program income will be generated (except as set forth in paragraph (b) above) will contain one of the following provisions for disposition of program income. Program income shall be:

- (1) Added to funds committed to the project by DoC and the recipient and be used to further eligible program objectives;
- (2) Used to finance the non-Federal share of the project;
- (3) Deducted from the total project costs.
- (d) In the event that unanticipated program income is generated, the recipient must contact the Grants Officer for instructions on its disposition.

3. Interest. Interest earned on advances of Federal funds shall be remitted to DoC except for interest earned on advances to states or instrumentalities thereof. Consistent with required financial management practices, payment requests should be timed to meet the immediate disbursement needs of the recipient.

4. Suspension and Termination. Every award will contain a provision for suspension and/or termination of the award for deficient project performance, poor financial management, non-payment of accounts receivable, and/or other deficiencies or problems as set forth in 7.04 Suspension and Termination.

5. Budget. A budget must be included in every award and it shall be used as the approved budget throughout the award for financial monitoring purposes.

6. Printing. Printing requirements in a grant award shall be consistent with applicable paragraphs of the government Printing and Binding Regulations published by the Joint Committee on Printing.

7. Indirect/Overhead Cost Rate Ceiling. Indirect costs shall not exceed direct costs in grants to non-profit and for-profit organizations.

8. Patent Policy. The policy and procedures set forth in OMB Circular A-124, "Patents-Small Business Firms and Nonprofit Organizations," as revised by Transmittal Memorandum No. 1 (49 Federal Register 10393 (1984)) implementing the President's February 18, 1983, memorandum on Government Patent Policy to the heads of agencies' apply to awards which are made where the purpose is the conduct of experimental, developmental, or research work. Attachment A, Standard Patent Rights Clause (April 1, 1984), of that Circular shall be applied to all recipients receiving research and development awards unless Attachment A is determined to be inappropriate according to the criteria set forth in that Circular.

9. For-Profit Organizations. OMB has not issued guidelines to cover award provisions for for-profit/commercial organizations. Therefore, the DoC shall use the following:

(a) Cost Principles. To determine costs for-profit/commercial organizations will be subject to OMB Circular A-122, "Cost Principles for Nonprofit Organizations" with the exception that indirect costs may not exceed direct costs.

(b) Administrative Requirements. For purposes of financial and procedural administration, for-profit/commercial organizations will be subject to OMB Circular

A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, Uniform Administrative Requirements."

(c) Profit or Fee. Profit or management fees paid to for-profit/commercial organizations are allowable at the discretion of each organization unit, however, shall not exceed 7 percent of total estimated direct costs. There must be no profit or fee to the recipient in any overhead charge. Entitlement to fee or profit is based on successful completion of project objectives.

10. Pre-award Grant Costs.

Pre-award costs may be approved by the Grants Officer upon receiving a written justification for the costs and breakdown of the costs estimated to have been and to be incurred in anticipation of receiving financial assistance. To be approved, the justification must show that the project would be or would have been severely affected without the incurrence of these costs. If approved, the pre-award costs shall be specifically set forth in the grant award. The applicant shall always be advised by the organization unit that incurring expenses in anticipation of receiving financial assistance will be at the applicant's own risk. Pre-award costs shall be kept to a minimum and shall not be a method to circumvent the requirement of 6.10a. Starting Date above.

11. Federal Employee Travel. Recipients of federal financial assistance shall be prohibited from expending federal or non-federal grant funds, or in-kind goods or services for purposes of providing transportation or other travel expenses for an employee of the awarding organization unit.

SECTION 7. POST-AWARD ADMINISTRATION OF GRANTS.

.01 Request for Prior Approval. When a recipient is required to request and obtain approval before taking certain actions with respect to a grant, the organization unit or Grants Officer shall acknowledge receipt of the recipient's request within ten working days of receipt of the correspondence. This acknowledgment of receipt of request shall, at a minimum, indicate the decision regarding the request or indicate a time-frame within which a decision will be made. In the later case, the decision shall be sent to the recipient in the time-frame specified.

.02 Financial Management.

a. Federal Requirements. Each organization unit shall comply with the applicable provisions of OMB Circular A-110, Attachments F, G, I, and J; and OMB Circular A-102, Attachments G, H, J, and K. In addition, each organization unit shall adhere to the following requirements:

1. OMB Circular A-21, OMB Circular A-87, and OMB Circular A-122;
2. Treasury Circular 1075, "Regulations Governing the Withdrawal of Cash from Treasury for Advance Payments under Federal Grant and Other Programs;"
3. DAO 203-7, "Cash Management and Advances of Cash Under Federal Grants and Other Programs;"
4. DoC Debt Management Policies and Procedures issued January 12, 1983; and
5. Any other such directives or guidelines. (See Appendix A.)

b. Advance of Cash to Recipients.

1. Organization units shall follow the provisions of Treasury Circular 1075 (31 CFR 205) and procedural instructions required by Section 205.8 of Treasury Circular 1075 for reviewing financial practices of recipient organizations and instituting remedies for noncompliance with advance funding provisions. Organization units shall also adhere to the provisions of Section 8. Of DAO 203-7, "Advances to Grantees and Other Recipients."

2. Requests for advances shall be timed to be in accordance with actual cash requirements for a period not to exceed 30 days.

3. Recipients have no inherent right to receive advances. Any recipient who does not comply with the financial management provisions set forth in this Order should be deemed ineligible to receive advances and will be placed solely on a reimbursement payment method.

4. Letter of Credit - The use of letter of credit to finance assistance awards of amounts of \$120,000 or greater for projects of at least one year in duration is required by Treasury Circular 1075 unless the Grants Officer has reason to believe that the recipient's financial management system or procedures may be inadequate to ensure effective internal management controls. The reasons not to use the letter of credit payment method must be documented in the official grant file by the Grants Officer.

.03 Project Monitoring and Reporting.

a. Monitoring Project Performance. Each organization unit shall comply with the applicable requirements of OMB Circular A-110, Attachment H, and OMB Circular A-102, Attachment I. See Program Officer, Section 4.04.e for specific responsibilities. No more than one original and two copies of any performance report may be required.

b. Property Management. Each organization unit shall comply with the applicable provisions of OMB Circular A-102 and A-110, Attachment N.

Each organization unit shall designate who retains title to all non-expendable personal property of a unit acquisition cost of \$1,000.00 or more. This designation may be made in the grant document at the time of the award or prior to closeout of the grant.

1. If title is vested with the Federal Government, the recipient must maintain an inventory listing of all property financed with grant funds, including matching/cost sharing funds. Upon project conclusion, the listing must be submitted to the organization unit, which will verify the property listing and forward the listing to the appropriate Property Management office for property disposition.

2. If title is vested with the recipient, the recipient is required to maintain the official property inventory listing including matching/cost sharing inventory. Even though title is vested with the recipient, property monitoring responsibility rests with the organization unit while the grant is ongoing.

c. Real Property.

1. Organization units with programs which allow the purchase of real property, whether acquired partly or wholly with Federal funds, shall establish program guidelines for the acquisition, use and disposal of real property. Unless otherwise required by statute, the program guidelines shall contain at a minimum the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project.

(b) The recipient shall obtain prior approval from the Grants Officer for the use of real property in other projects when the recipient determines the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under other federally funded projects or projects that have purposes consistent with those authorized for support by the organization unit.

2. When property is no longer needed as provided in (a) and (b) above the recipient shall request disposition instructions from the Grants Officer.

(a) The recipient may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The recipient may be directed to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix up expenses, if any, from the sale proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The recipient may be directed to transfer title to the property to the Federal Government provided that in such cases the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the project to the current fair market value of the property.

d. Procurement.

1. Each award document shall contain provisions to ensure recipients comply with applicable provisions of OMB Circulars A-102 and A-110, Attachment O.

2. Subrecipients are subject to the same terms and conditions as are recipients. Recipients are responsible for monitoring subrecipient compliance.

.04 Suspension and Termination. Suspension and termination actions may be taken when a recipient fails to comply with the terms and conditions of the grant. These actions require review and clearance by Legal Counsel.

a. Deficient Project Performance. When the Grants Officer or organization unit program personnel determine that a recipient is deficient in its performance or management of the grant award, this determination shall be immediately communicated to the recipient in writing along with the opportunity for the recipient to respond to the finding. If the performance deficiencies are severe, the program officer shall send written notice to the recipient advising that if the recipient fails to take corrective action within a reasonable time-frame (i.e., one month) or does not provide a satisfactory response to the problems raised, a recommendation will be made to the Grants Officer to suspend the award. If the deficiencies are not resolved following reasonable attempts to correct them, the Grants Officer may suspend or terminate the award in consultation with the program officer or designate the recipient as high risk and assign special conditions.

b. Poor Financial Management. When the recipient's financial reports or audits indicate that the terms of the award are not being complied with (e.g., failure to outlay the non-federal share at the same general rate as the federal share or a pattern of maintaining excess federal funds exists), then the Grants Officer shall promptly notify the recipient of the problem(s) and advise that suspension/termination action may be taken if the problem(s) is not corrected. If the problem(s) is not corrected to the Grants Officer's satisfaction, the award may be suspended until such time as the problem(s) is corrected. If the problem(s) continues, the award may be terminated or designated high risk and special conditions assigned.

c. Non-Payment of Accounts Receivable. The terms and conditions of each award shall also provide provisions for the suspension and/or termination of the award for non-payment of accounts receivable.

d. Other Deficiencies or Problems. Other circumstances such as falsification of records (i.e., applications, financial or progress reports) or negative name check information may be considered grounds for suspension and/or termination.

.05 Amendments.

a. Amendments to financial assistance awards shall be clearly and formally documented in the official grant file by the Grants Officer with input from the program officer. As a document that is binding upon the Department these actions must be reviewed and cleared by Legal Counsel.

b. Renewals are reviewed in the same manner as new applications and must compete for availability of funds.

.06 Audit/Debt Collection and Closeout.

a. Unobligated Funds.

1. At the completion of an award period, the recipient may have an unobligated balance of funds on hand because the Federal dollars advanced exceeded recipient obligations.

The unobligated balance shall be returned to the Federal Government immediately. If the funds are not received within 90 days of the end date of the current award period, an accounts receivable shall be established which shall be billed to the recipient and interest charged, as on any other account receivable.

2. Recipients with an outstanding accounts receivable established to collect unobligated funds on hand are subject to the payment of accounts receivable provisions of this Order and DoC debt management policy.

b. Deobligation. Within ten days of receipt of the final financial status report, the Finance Officer shall be notified by the Grants Officer to deobligate the balance of the award not disbursed to the recipient.

c. Audit Resolution.

1. Each award document shall include provisions for recipient responsibility in obtaining an organization-wide audit.

2. In accordance with DAO 213-5, Audit Follow-up and Resolution, DoC and organization unit personnel shall act promptly to properly resolve audit recommendations and findings. A unified DoC decision on resolution of audit recommendations shall be made within 6 months of the issuance of the audit report.

3. The audit resolution process may, through no fault of the recipient, exceed the mandated 6-month time period. The recipient may have been responsible and cooperative with audit and program officials, but DoC may not have reached a final decision as to the amount to be established as an accounts receivable. In the event that an award is pending to a recipient meeting the above conditions, an award may be made at the discretion of the DoC if the award includes appropriate provisions to withhold the current negotiated amount from payments made under the award.

4. Recipients are responsible for the collection of audit related debts from their subrecipients where an audit has determined funds are owed. This does not relieve the recipient of liability for the debt.

5. Disputes and Appeals - All disputes arising from audits shall be resolved through the procedures set forth in DAO 213-5.

d. Debt Collection.

1. In accordance with the DoC debt management procedures, accounts receivable shall be promptly established, billed, and collected.

2. Once an accounts receivable for a recipient has been established, no further awards will be made to the recipient until the debt is paid except in circumstances cited in subparagraph d.4 below.

3. Interest on debts shall begin to accrue no later than 30 days from the date the recipient is billed. The interest rate applied shall be that prescribed by the Treasury Fiscal Requirements Manual (I TFRM 6-8000).

4. In the case that a payment schedule has been formally negotiated and agreed to by the Department and the recipient, a new award may be made as long as the recipient is making payments in accordance with the agreement. Recipients should be placed on a reimbursement payment method until the accounts receivable is paid.

(a) In cases where a payment schedule has been negotiated, the Finance Officer shall notify the Grants Officer and recipient when the payment on the accounts receivable is five days late.

(b) The Grants Officer may suspend any current awards if payment on a negotiated payment schedule is 10 days delinquent. The Grants Officer must suspend the current awards when payment is 30 days delinquent unless the Grants Officer determines and sets forth in writing the reasons that it is not in the best interest of the Federal Government to do so. This written determination shall become part of the recipient's official grant file(s).

(c) Suspended awards may be reactivated upon full up-to-date payment on the accounts receivable.

(d) The Grants Officer may terminate a suspended award based on nonpayment of accounts receivable.

5. If a prospective recipient has at one time been funded by the DoC and DoC has at one time been funded by the DoC and DoC has written off a debt established as a result of that funding no awards can be made to the recipient until the debt to the Department is repaid, or payment schedule negotiated and one payment received, or other arrangements satisfactory to the DoC have been made.

6. The Grants Officer shall advise the recipient that payment of audit related debts should not result in charges to other Federal programs or in a reduced level of program activity.

e. Close-out.

1. Each organization unit shall comply with the applicable provisions of OMB Circular A-110, Attachment K; and OMB Circular A-102, Attachments L; and the Single Audit Act of 1984 (an OMB Circular is being developed which will replace Attachment P to Circular A-102).

2. In cases where a recipient will no longer be in operation after a grant has been completed, the organization unit shall require the recipient:

(a) to identify where records pertaining to the grant project will be located for the required three (3) year retention period, and

(b) to provide appropriate assurances of Government access thereto.

SECTION 8. EFFECT ON OTHER ORDERS.

This Order supersedes Department Administrative Order 203-26, dated January 12, 1981.

(signed)

Assistant Secretary for Administration

Office of Primary Interest

Federal Assistance Division

APPENDIX A DAO 203-26

The following list contains references to general laws and directives, Executive Orders, and management circulars that affect grants administration. The list is not intended to be exhaustive; however, it is included as an aid to DoC grants management and program personnel. It is understood that any revisions or additions to the listed materials are applicable.

I. NONDISCRIMINATION

A. Title VI, Civil Rights Act of 1964, Pub. L. No. 88-352, 42 U.S.C. 2000d to 2000d-4; 28 CFR Part 42, Subpart F, Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs, 15 CFR Subtitle A, Part 8, Nondiscrimination in Federally Assisted Programs of the Department of Commerce -- Effectuation of Title VI of the Civil Rights Act of 1964.

B. Age Discrimination Act of 1975, Pub. L. No. 94-135 as amended, 42 U.S.C. 6101 et seq.

C. Education Act Amendments of 1972, Title IX, as amended, 20 U.S.C. 1681 et seq.

D. Rehabilitation Act of 1973, Section 504, Pub. L. No. 93-112 as amended, 29 U.S.C. 794; Rehabilitation Act Amendments of 1974, Pub. L. No. 93-516; 28 CFR Part 41 - Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs.

E. Architectural Barriers Act of 1968, Pub. L. No. 90-480 as amended, 42 U.S.C. 4151 et seq.

F. Executive Order No. 12250, Leadership and Coordination of Implementation and enforcement of Nondiscrimination Laws, Nov. 2, 1980, 45 F.R. 72995.

G. Executive Order No. 11246, Equal Employment Opportunity, Part III, "Non-discrimination Provisions in Federally Assisted Construction Contracts," 3 CFR 339 (1965), as amended by Executive Order Nos. 11375, 3 CFR 684 (1967) and 12086, 3 CFR 230 (1978).

II. PARTICIPATION OF MINORITY AND WOMEN OWNED BUSINESS

A. Executive Order No. 11625, Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise, 3 CFR 616 (1971).

B. Executive Order No. 12138, Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise (May 18, 1979), 44 F.R. 29637, May 22, 1979.

C. Executive Order 12432, Minority Business Enterprise Development (July 14, 1983), 48 F.R. 32551, July 18, 1983.

III. GENERAL ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

A. Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224, 31 U.S.C. SS 6301 - 6308: OMB Guidelines, 43 F.R. 36860 (August 18, 1978).

B. 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public," implementing portions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

C. OMB Circular A-89 Revised, Catalog of Federal Domestic Assistance.

D. Treasury Circular No. 1075, 4th Revision, Regulation Governing the Withdrawal of Cash from Treasury for Advance Payments Under Federal Grant and Other Programs, 31 CFR Part 205.

E. Executive Order 12372, Intergovernmental Review of Federal Programs (July 14, 1982, 47 F.R. 30959).

F. DAO 203-7, Cash Management and Advances of Cash Under Federal Grants and Other Programs.

G. Claims Collection Act of 1966, Pub. L. No. 89-508, 31 U.S.C. 3711, 3716, and 3718, as amended by the Debt Collection Act of 1982, Pub. L. No. 97-365, enacted October 25, 1982.

IV. RECIPIENT-RELATED ADMINISTRATIVE AND FISCAL REQUIREMENTS

A. Non-Profit and For-Profit Organizations and Institutions

- 1) OMB Circular No. A-21, Cost Principles for Educational Institutions.
- 2) OMB Circular No. A-88, coordinating Indirect Cost Rates and Audit at Educational Institutions.
- 3) OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- 4) OMB Circular A-122, Cost Principles for Non-Profit Organizations.

B. State and/or Local Governments

- 1) OMB Circular No. A-102, Uniform Administrative Requirements for Grant-In-Aid to State and Local Governments.
- 2) OMB Circular No. A-73, Audit of Federal Operations and Programs.
- 3) OMB A-87, Cost Principles Applicable to Grants and Contracts with State and Local Governments.

V. ACCESS TO INFORMATION

A. Freedom of Information Act, as amended 5 U.S.C. 552.

B. Privacy Act of 1974, Pub. L. No. 93-579, 5 U.S.C. 552a.

APPENDIX B DAO 203-6

LIST OF ORGANIZATION UNITS

Office of the Secretary

United States Travel and Tourism Administration

Patent and Trademark Office

National Technical Information Service

National Telecommunications and Information Administration

National Oceanic and Atmospheric Administration

National Bureau of Standards

Minority Business Development Agency

International Trade Administration

Economic Development Administration

Bureau of Industrial Economics

Bureau of Economic Analysis

Bureau of the Census